

CONSTRUCTION OF THREE HYDROELECTRIC PROJECTS IN
THE STATE OF ARKANSAS

NOVEMBER 7, 1995.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce,
submitted the following

REPORT

[To accompany H.R. 657]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill
(H.R. 657) to extend the deadline under the Federal Power Act ap-
plicable to the construction of three hydroelectric projects in the
State of Arkansas, having considered the same, report favorably
thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

The purpose of H.R. 657 is to extend the deadline for the com-
mencement of construction of three hydroelectric projects in Arkan-
sas licensed by the Federal Energy Regulatory Commission (FERC)
for up to six years.

BACKGROUND AND NEED FOR LEGISLATION

Section 13 of the Federal Power Act (16 U.S.C. § 806 (1988)) establishes time limits for commencement of construction of a hydroelectric project once FERC has issued a license. The licensee must begin construction not more than two years from the date the license is issued, unless FERC extends the initial deadline. However, section 13 permits FERC to grant only one extension of that deadline for "not longer than two additional years * * * when not incompatible with the public interests." Accordingly, FERC lacks authority to extend the deadline beyond a maximum of two years from the original deadline for commencement of construction. Therefore, a license is subject to termination if a licensee fails to begin construction within four years of the date the license is issued.

H.R. 657 would extend the deadline for the commencement of construction for three projects (Project Nos. 4204, 4659, 4660) constituting the 21 megawatt White River Project for up to a maximum of three consecutive two-year periods. Since these projects were previously granted a six year extension by Congress in 1989, this extension would extend the deadline for up to sixteen years. The construction deadline for Projects No. 4204 and 4659 is February 27, 1996, and the deadline for Project No. 4660 is November 7, 1995. According to the project sponsors, construction has not commenced for lack of a power purchase agreement. H.R. 657 does not ease the requirements of a hydroelectric license, but merely extends the period for commencement of project construction.

The legislation provides for three consecutive two-year extensions, instead of a six-year extension, to assure that licensees must continue to meet the section 13 requirement that they prosecute construction "in good faith and with due diligence" before obtaining each two-year extension. If FERC determines that the licensee is not prosecuting construction in good faith and with due diligence, the Committee expects the agency will refuse to grant a request for an additional two-year extension, terminate the license, and make the site available for other uses.

Lack of a power sales contract is the main reason construction of licensed hydroelectric projects has not commenced. It is very difficult for a hydroelectric project sponsor to secure financing until it has been granted a license, and once it has been granted a license the construction deadline begins to run. Without a power sales contract, a project generally cannot be financed. There are other obstacles to commencement of construction, such as protracted proceedings on a licensee's application for a dredge and fill permit from the Army Corps of Engineers under section 404 of the Clean Water Act. FERC has testified that in such cases it has issued orders staying the license until matters are resolved, suggesting that extension legislation is not needed in order to address delays beyond the control of the licensee. However, this does not apply to delays that are subject to the control of the licensee, such as lack of a power sales contract.

One reason it is difficult for project sponsors to obtain power sales contracts is the changing nature of the electric industry in the United States. As the industry has become more exposed to

competition, utilities are seeking to lower their costs and increase their flexibility. The term of power sales contracts that finance hydroelectric projects range up to 25 to 30 years, and utilities are trying to avoid purchase agreements with long terms. In addition, the generating cost of these projects may not be as favorable as other alternatives.

HEARINGS

The Subcommittee on Energy and Power held a hearing on H.R. 657 and various other legislative proposals to extend the deadline for commencement of construction on October 18, 1995. Testimony was received from Ms. Susan Tomasky, General Counsel, Federal Energy Regulatory Commission.

COMMITTEE CONSIDERATION

The Subcommittee on Energy and Power met in open markup session on October 18, 1995, and approved H.R. 657 for Full Committee consideration by a voice vote, without amendment, a quorum being present. The Full Committee met in open markup session on October 25, 1995 and ordered H.R. 657 reported to the House by a voice vote, without amendment, a quorum being present.

ROLLCALL VOTES

Clause 2(l)(2)(B) of rule XI of the Rules of the House requires the Committee to list the recorded votes on the motion to report legislation and on amendments thereto. There were no recorded votes taken in connection with ordering H.R. 657 reported. A motion by Mr. Bliley to order H.R. 657 reported to the House, without amendment, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Subcommittee on Energy and Power held legislative hearings and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 657 would result in no new or increased budget authority or tax expenditures or revenue.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, following is the cost estimate provided by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 27, 1995.

Hon. THOMAS J. BLILEY, Jr.,
*Chairman, Committee on Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 657, a bill to extend the deadline under the Federal Power Act applicable to the construction of three hydroelectric projects in the state of Arkansas, as ordered reported by the House Committee on Commerce on October 25, 1995. CBO estimates that enacting the bill would have no net effect on the federal budget.

The bill would extend the deadline for construction of three hydroelectric projects currently subject to licensing by the Federal Energy Regulatory Commission (FERC). This provision may have a minor impact on FERC's workload. Because FERC recovers 100 percent of its costs through user fees, any change in its administrative costs would be offset by an equal change in the fees that the commission charges. Hence, the bill's provisions would have no net budgetary impact.

Because FERC's administrative costs are limited in annual appropriations, enactment of this bill would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill. In addition, CBO estimates that enacting the bill would have no significant impact on the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kim Cawley.

Sincerely,

JUNE E. O'NEILL, *Director.*

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that H.R. 657 would have no inflationary impact.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Extension of deadlines

This section authorizes FERC, upon the request of the licensee for Project Nos. 4204, 4659, and 4660, after reasonable notice, and in accordance with the good faith, due diligence, and public interest requirements of section 13 of the Federal Power Act and FERCs

procedures under such section, to extend the time required for commencement of construction for such projects for up to a maximum of three consecutive two-year periods. The section will take effect upon the expiration of the extension previously granted by FERC.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, the Committee finds that no changes in existing law are made by H.R. 657.

